UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/2001/20/Add.1
6 June 2001

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sub-Commission on the Promotion and
Protection of Human Rights
Fifty-third session
Item 5 of the provisional agenda

PREVENTION OF DISCRIMINATION AND PROTECTION OF INDIGENOUS PEOPLES AND MINORITIES

The rights of non-citizens

Preliminary report of the Special Rapporteur, Mr. David Weissbrodt, submitted in accordance with Sub-Commission decision 2000/103

Addendum

GE.01-14149 (E) 180601

CONTENTS

		Paragraphs	Page
I.	INTRODUCTION	1	3
II.	COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD)	2 - 23	3
	A. CERD jurisprudence	2 - 4	3
	B. CERD concluding observations	5 - 23	3
III.	HUMAN RIGHTS COMMITTEE	24 - 61	7
	A. Human Rights Committee jurisprudence	24 - 45	7
	B. Human Rights Committee concluding observations	46 - 61	12
IV.	COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR)	62 - 89	14
	CESCR concluding observations	62 - 89	14
V.	COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW)	90 - 98	20
	CEDAW concluding observations	90 - 98	20
VI.	COMMITTEE ON THE RIGHTS OF THE CHILD (CRC)	99 - 118	21
	CRC concluding observations	99 - 118	21
VII.	EUROPEAN COURT OF HUMAN RIGHTS (ECHR)	119 - 133	25
	ECHR jurisprudence	119 - 133	25
VIII.	INTER-AMERICAN COURT OF HUMAN RIGHTS (IACHR)	134 - 136	28
	IACHR jurisprudence	134 - 136	28

I. INTRODUCTION

1. This addendum contains brief summaries of the various jurisprudence and concluding observations upon which the main section of the preliminary report (E/CN.4/Sub.2/2001/20) is based.

II. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (CERD)

A. CERD jurisprudence

2. CERD has adopted the following views on the rights of non-citizens, reflecting its mandate under article 14 of the Convention on the Elimination of All Forms of Racial Discrimination to consider communications.

3. At its fifty-fourth session in 1999 CERD considered *Zaid Ben Ahmed Habassi v. Denmark*.[1] The communication involved the refusal of a loan by a Danish bank on the sole ground of the author's non-Danish nationality. The author, a citizen of Tunisia, was told that the nationality requirement was motivated by the need to ensure that the loan was repaid. A complaint was made with local authorities but an investigation into the incident was discontinued after a finding that the nationality requirement was a legitimate method of ensuring repayment. The communication alleged that Denmark violated article 2 (d) by not adequately investigating his claim of racial discrimination. It was the opinion of the Committee that nationality is not the most appropriate requisite when investigating a person's will or capacity to reimburse a loan. The applicant's permanent residence or the place of his employment and property, or family ties, are more relevant in this context as citizens may live abroad and thus have few territorial ties to their State of citizenship. CERD therefore held that in such situations States parties to the International Convention on the Elimination of All Forms of Racial Discrimination are obliged to conduct a thorough investigation in order to determine whether racial discrimination was a motivating factor.[2]

4. At the same session, CERD considered *B.M.S. v. Australia*[3] in which an Indian national and medical doctor complained that Australia's quota system, by which it limited the number of licensed non-citizen medical doctors, violated article 5 (e) (i) of the Race Convention, namely the right to work and free choice of employment. CERD concluded that such professional licensing schemes did not violate the Convention as long as they applied to all foreign medical doctors regardless of race or national origin.[4]

B. CERD concluding observations

5. CERD has also reflected its continuing concern about various forms of discrimination against non-citizens in its consideration of several States parties' reports. In doing so, CERD has made concluding observations and comments on the rights of non-citizens with regard to numerous countries, reflecting its mandate under the Convention to address discrimination against non-citizens.

6. For example, in examining the report of Croatia[5] at its forty-second session in 1993, CERD "noted with concern the general lack of clarity in a number of basic legal provisions guaranteeing non-discrimination in the enjoyment of human rights and fundamental freedoms for members of the minority communities," noting that "[i]n some cases, guarantees would appear to apply only to citizens of Croatia."[6] The Committee expressly noted that article 14 of the Croatian Constitution prohibiting racial discrimination and article 35 guaranteeing fundamental freedoms appeared to apply only to Croatian citizens.[7]

7. In examining the report of the Republic of Korea[8] at its forty-third session in 1993, CERD "sought clarification on matters relating to naturalization and the rights to inheritance of naturalized citizens; foreigners' eligibility to join or create trade unions and enjoy the benefit of their protection; the level of wages received by foreign workers; and foreign workers' enjoyment of the rights to medical and other social services."[9] The government representative informed CERD that "naturalized citizens benefited from the same rights and had the same obligations as other citizens" and that "foreign workers had the same rights as workers who were nationals of the country, provided that they were legally registered for work."[10] In its concluding observations on the report, however, the Committee expressed its concern "at the reported discrimination suffered by spouses and children of foreign workers."[11]

8. During its examination at the same session of the report of Kuwait,[12] CERD, recalling that "States parties were under an obligation to report fully on legislative measures relating to foreigners and their implementation,"[13] asked for more precise information on the current situation of certain categories of persons, and in particular Bedouins and Palestinians, who were reported to be in a very vulnerable position. According to reports from various sources, Bedouins, Palestinians, Iraqis, and citizens of other countries that had not participated in the coalition against Iraq had been dismissed from public employment; excluded from the public school system; and subjected to ill-treatment, detention, expulsion, and torture. In addition, CERD expressed concern that domestic staff of Asian origin "were subjected to debt bondage, other illegal employment practices, passport deprivation, illegal confinement, rape and physical assault."[14] The Committee recommended that Kuwait should "take steps to guarantee the enjoyment by individuals belonging to vulnerable groups of foreigners, including foreign domestic servants, of the rights enshrined in the Convention without any discrimination."[15]

9. At its forty-second session in 1993, CERD examined the report of Qatar.[16] With respect to article 2 of the Convention, CERD inquired whether article 9 of the Constitution of Qatar, which guaranteed equality of all individuals in regard to their rights and obligations, also applied to non-citizens; whether non-Arabs were able to acquire Qatar nationality; whether foreign workers were discriminated against; and whether the Government intended to adopt legislation prohibiting discrimination against foreign workers. With respect to article 5 of the Convention, CERD expressed concern about "whether free choice of employment was guaranteed to foreigners, whether foreign workers had access to all professions and trades, whether the Government envisaged measures to eliminate differences between citizens and foreign workers concerning access to all trades, whether non-citizens were eligible to receive social security benefits, and whether freedom to leave the country and return was guaranteed to non-citizens."[17] CERD explicitly noted that "legislation restricting non-Arab lawyers from pleading a case before the courts was discriminatory."[18]

10. In examining the report of Nigeria,[19] CERD inquired into the rights and guarantees of non-citizens under the Nigerian Constitution and why a distinction was made in national legislation between citizens of Nigeria by birth and other Nigerians. CERD emphasized that under article 5 of the Convention, States "had an obligation to guarantee the civil, political, economic, social and cultural rights of the whole population and not just of citizens."[20] Furthermore, CERD "recommended that national legislation be brought into full compliance with the provisions of the Convention, in particular regarding ... the effective enjoyment of the rights set forth in article 5."[21]

11. CERD examined subsequent reports of Nigeria[22] at its forty-seventh session in 1995. In connection with article 1 of the Convention, CERD "noted that section 39 (1) of the 1979 Nigerian Constitution provided for the protection of citizens against discrimination, but did not cover non-citizens or provide protection against discriminatory actions or practices outside the governmental sector."[23]

12. CERD examined the report of Italy[24] at its forty-sixth session in 1995. Regarding article 5 of the Convention, CERD expressed concern that legislation concerning political asylum for non-European Union citizens might be "more restrictive in matters relating to the status and employment of the people concerned than the ordinary Italian legislation in those areas."[25] CERD also expressed concerns "about some cases involving the ill-treatment of foreigners of non-[European] Community origin by police officers and prison staff."[26]

13. CERD considered the report of the United Arab Emirates[27] at its forty-seventh session in 1995. With respect to article 5 of the Convention, CERD "asked to what extent foreign workers ... were entitled to have their children join them and to have them educated in their own language, and whether those children were free to practise their religion."[28] CERD also inquired into the content of bilateral agreements between the United Arab Emirates and other countries regarding the status of foreign workers. Members of CERD "expressed their deep concern at information from various sources that foreign workers, particularly women from Asian countries, were subjected to inhuman treatment."[29] CERD also asked whether aliens living in the United Arab Emirates had the right to assemble freely and practise their culture. CERD recommended that the United Arab Emirates "show the utmost diligence in preventing acts of ill-treatment being committed against foreign workers, especially foreign women domestic servants, and take all appropriate measures to ensure that they are not subjected to any racial discrimination."[30]

14. At its fifty-fifth session in 1999, CERD considered the reports of Azerbaijan[31] and noted that Azerbaijan had been engaged in a conflict with Armenia since 1991, resulting in a large refugee population. Because of the occupation of some 20 per cent of its territory, Azerbaijan stated that it could not fully implement the Convention.[32] Although CERD noted that Azerbaijan's Constitution guarantees the enjoyment, without discrimination, of most of the rights mentioned in article 5 of the Convention, it expressed "acute concern about the effective enjoyment of these rights by persons belonging to ethnic groups, in particular by persons belonging to Armenian, Russian, and Kurdish minorities when seeking employment, housing, and education."[33] The Committee recommended that Azerbaijan take additional steps to implement article 6 of the Convention by facilitating equal access to the courts and administrative bodies for all persons belonging to ethnic minorities.[34] CERD requested that

Azerbaijan include in its next report appropriate extracts from the Law on Citizenship so that the Committee could consider whether it conforms with the Convention.[35] Further, the Committee recommended that Azerbaijan utilize all available means, including international cooperation, to address the situation of displaced persons and refugees, especially regarding their access to education, housing, and employment.[36]

15. CERD considered the report of Chile[37] at its fifty-fifth session in 1999. The Committee welcomed efforts towards reform of domestic legislation, including a draft reform of the Penal Code then under discussion in the Congress designed to penalize acts of discrimination on grounds of race or national or ethnic origin.[38] The Committee expressed concern regarding the situation of migrant workers, in particular those of Peruvian nationality, and requested that Chile include detailed information in its next report on their situation and the implementation of articles 4 and 5 of the Convention.[39] CERD expressed concern about research that showed a "considerable part of the Chilean population demonstrates intolerant and racist tendencies."[40] It recommended that Chile use all effective means to "raise the awareness of its people about the rights of indigenous peoples and national or ethnic minorities."[41]

16. At the same session, CERD considered the report of the Dominican Republic.[42] The Committee expressed concern regarding "the situation of a large number of Haitians living in the country, the majority of them illegally, in view of the information that they, and in particular women and children, are often unable to enjoy the most basic economic and social rights, such as housing, education, and health services."[43] CERD recommended that the Dominican Republic take urgent measures to ensure the enjoyment by persons of Haitian origin of their economic, social, and cultural rights without discrimination.[44]

17. In considering the report of Guinea[45] at the same session, CERD noted that the influx of a large number of refugees from Sierra Leone, Liberia, and Guinea-Bissau had impeded the full implementation of the Convention.[46] The Committee noted with appreciation Guinea's willingness to receive over 1 million refugees and asylum-seekers from neighbouring countries, and that domestic legislation provides for the protection and asylum of refugees fleeing their countries because of racial or ethnic discrimination.[47] While noting that Guinea's Constitution establishes the principle of equality and that domestic legislation criminalizes acts of racial discrimination, the Committee expressed concern at the lack of information on the implementation of articles 2, 4, and 5 of the Convention.[48] Specifically, CERD expressed concern at the destruction by Guinea of many homes in the Conakry Ratoma neighbourhood, belonging mainly to members of the Puhlar ethnic group, which resulted in riots and continuing inter-ethnic tension in that area.[49] The Committee requested that Guinea submit a report on the situation in Conakry Ratoma and the measures taken to address inter-ethnic tension in the area and compensate persons whose property was expropriated.[50] CERD recommended that Guinea include in its next report "the text of the Law on Citizenship for the Committee to evaluate the limitations on foreigners and stateless persons on the enjoyment of the rights enshrined in article 5 of the Convention."[51]

18. CERD considered the report of Haiti[52] at its fifty-fifth session in 1999. The Committee expressed concern at the lack of domestic legislation to prevent acts of discrimination by individuals in implementation of articles 2 (1) (d) and 5 (e) of the Convention.[53] CERD

recommended that Haiti include in its next report information on restrictions upon foreigners of different racial or ethnic origin and upon non-native Haitians, with respect to the enjoyment of the rights enshrined in article 5 of the Convention.[54]

19. In 2000 CERD considered the combined initial, second, third, and fourth periodic reports of Estonia.[55] In doing so, CERD expressed concern that the definition of national minorities contained in Estonia's 1993 National Minorities Cultural Autonomy Act only applies to Estonian citizens.[56] In light of the significant number of non-nationals and stateless persons residing in the territory of the State party, CERD was concerned that such a restrictive and narrow definition may limit the scope of Estonia's State Programme on Integration, by which it aimed to encourage the integration of different nationalities residing within its territory.[57]

20. In the same concluding observations with regard to Estonia, CERD expressed particular concern that the provisions for restricted immigration quotas established by the 1993 Aliens Act apply to citizens of most countries in the world, except those of the European Union, Norway, Iceland, and Switzerland.[58] CERD recommended that the quota system be applied without discrimination based on race or ethnic or national origin.[59]

21. In considering the fourteenth periodic report of Denmark in 2000,[60] CERD noted that the new Act on Integration of Aliens transfers the responsibility for integration from the central to the local authorities. CERD recommended that Denmark monitor closely the implementation of the new Act with a view to ensuring that the geographical distribution of aliens within the State party is made according to the principle of equity and does not lead to violation of their rights recognized under the Convention.[61]

22. Also in 2000, CERD considered the combined second, third, and fourth periodic reports of Zimbabwe.[62] In doing so, the Committee noted with concern the insufficient information provided on the situation of refugees, migrants, and non-nationals residing in Zimbabwe.[63] Additionally, it noted with dissatisfaction that the laws concerning citizenship give preference to non-national female spouses over non-national male spouses of nationals of Zimbabwe.[64] It recommended that the State party review its citizenship laws to ensure non-discrimination.[65]

23. In considering the combined twelfth, thirteenth, and fourteenth periodic reports of France,[66] also in 2000, CERD expressed concern about possible discrimination in the implementation of laws providing for the removal of foreigners from French territory, including persons in possession of valid visas.[67]

III. HUMAN RIGHTS COMMITTEE

A. Human Rights Committee jurisprudence

24. The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights, has adopted the following views on the rights of non-citizens, reflecting its mandate under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights to consider communications submitted to it.

25. For example, in 1981, the Human Rights Committee considered a communication, *Shirin Aumeeruddy-Cziffra and 19 other Mauritian Women v. Mauritius*[68] in which a Mauritian woman alleged that Mauritius immigration law discriminated against women in violation of articles 2 (1) and 3 of the Covenant on Civil and Political Rights.[69] The Government of Mauritius adopted an immigration law which provided that if a Mauritian woman married a man from another country, the husband must apply for residence in Mauritius and that permission may be refused.[70] If, however, a Mauritian man married a foreign woman, the foreign woman was entitled automatically to residence in Mauritius.[71] The Human Rights Committee did not hold that foreigners have a right to enter or reside in Mauritius. Nonetheless, the Committee held that Mauritius had violated the Covenant by discriminating between men and women without adequate justification.[72] The law also violated the right of the family to live together.[73]

26. At its twenty-seventh session in 1986, the Human Rights Committee considered a communication, *Eric Hammel v. Madagascar*,[74] in which a French national alleged that his arrest and subsequent expulsion violated the International Covenant on Civil and Political Rights because he had no opportunity to avail himself of any of the remedies of appeal against expulsion that are provided by law.[75] Madagascar denied the alleged violation of article 13 of the Covenant arguing that expulsion may be ordered "if the residence of the alien in Madagascar may give rise to a breach of the peace or threatens public security."[76] The Human Rights Committee adopted the view that there was a violation of article 13, noting that the French citizen "was not given an effective remedy to challenge his expulsion and that the State party has not shown that there were compelling reasons of national security to deprive him of that remedy."[77] The Committee noted that "an alien must be given full facilities for pursuing his remedy against expulsion ... ."[78]

27. At its forty-third session in 1991, the Human Rights Committee considered a communication, *Cañón García v. Ecuador*.[79] A Colombian citizen alleged that his expulsion to the United States violated the International Covenant on Civil and Political Rights because he should have been afforded the procedural safeguards provided in the extradition treaty between the State party and the United States.[80] Upon his arrest, the Colombian citizen was denied access to an attorney or the Colombian Consul, and instead was flown immediately to the United States. In adopting the view that Ecuador had violated articles 7, 9, and 13 of the Covenant, the Human Rights Committee noted that Ecuador conceded that the author's removal from its jurisdiction suffered from irregularities and that it was conducting an ongoing investigation into the matter.[81]

28. At its forty-ninth session in 1993, the Human Rights Committee considered a communication, *Chitat Ng v. Canada*.[82] The author of the communication, a British subject, complained that his extradition to the United States on capital charges violated Canadian obligations under article 6 of the International Covenant on Civil and Political Rights. The Committee noted that if a State party extradites a person within its jurisdiction "in such circumstances that as a result there is a real risk that his or her rights under the Covenant will be violated under another jurisdiction, the State party itself may be in violation of the Covenant."[83] The Human Rights Committee, however, adopted the view that the Covenant does not necessarily require Canada to refuse to extradite a non-national who may face the death penalty.[84]

29. At its fifty-first session in 1994, the Human Rights Committee considered a communication, *Celepli v. Sweden*.[85] A Turkish citizen alleged that a Swedish decision to expel him, or, alternatively, to subject him to residence restrictions, was discriminatory.[86] Sweden contended that suspicions of the Turkish citizen's involvement in terrorist activities invoked compelling reasons of national security to restrict his freedom of movement without providing a possibility of appeal.[87] The Committee adopted the view that, bearing in mind that the State party had invoked reasons of national security, the restrictions to which the Turkish national was subjected were compatible with the Covenant.[88]

30. At its fifty-seventh session in 1996, the Human Rights Committee considered a communication, *Josef Frank Adam v. The Czech Republic*.[89] The author, an Australian citizen, alleged that Czech legislation providing for restitution excludes non-Czech claimants and therefore entails discrimination in violation of article 26 of the International Covenant on Civil and Political Rights.[90] The Committee first reiterated "its jurisprudence that not all differentiation of treatment can be deemed discriminatory under article 26."[91] The Human Rights Committee adopted the view that since the State party itself is responsible for the author's lack of Czech citizenship, however, "it would be incompatible with the Covenant to require [the author] to obtain Czech citizenship as a prerequisite for the restitution of [his] property."[92]

31. At its fifty-ninth session in 1997, the Human Rights Committee considered a communication, *A v. Australia*.[93] The author, a Cambodian citizen, contended that Australia's immigration law was discriminatory in its treatment of non-nationals in that it differentiated with regard to treatment between those immigrants who arrived by boat and those who arrived by another means.[94] The author further alleged that he was deprived of his right to equality before the court when he was deprived of effective access to legal advice.[95] The State party first submitted that the quality of "'boat person' cannot be approximated to 'other status'" within the meaning of illegal discrimination under article 2 of the International Covenant on Civil and Political Rights.[96] The State party further submitted that "no argument can be made that there was a breach of the author's right to equality before the courts [concerning legal advice and representation]: ... he was not subject to any discrimination on the grounds that he was an alien."[97] The Human Rights Committee adopted its view without making a decision on the first allegation and noted that, as a factual matter, the author was not denied effective access to legal advice.[98]

32. At its sixty-first session in 1997, the Human Rights Committee considered a communication, *Mrs. G.T. v. Australia*.[99] The author of the communication alleged that Australia's decision to deport her Malaysian husband to Malaysia where he might be subject to the death penalty under the Malaysian Dangerous Drugs Act would violate his right to life.[100] The State party submitted that expulsion is distinguishable from extradition in that the very purpose of extradition is to return the person for prosecution, whereas no such necessary link exists between expulsion and possible prosecution of a non-national.[101] In deciding that Australia did not violate any of the author's husband's rights, the Human Rights Committee adopted the view that the author had failed to substantiate the claim that there was a real risk that her husband would be charged at all if he were returned to Malaysia.[102] The Committee, however, held that if a State party deports a person within its territory and subject to its

jurisdiction in such circumstances that, as a result, there is a real risk that his or her rights under the Covenant will be violated in another jurisdiction, that State party itself may be in violation of the Covenant.

33. At its sixty-eighth session in 2000 the Human Rights Committee considered *Zouhair Ben Said v. Norway*[103] in which a Tunisian citizen, who at the time was not residing in Norway, claimed he was denied his right to a fair trial guaranteed by article 14, paragraph 1, of the Covenant because he was denied entry into Norway in order to attend a court hearing at the Oslo City Court regarding a child custody and visitation rights case. The Committee found that in such situations the State party is under an obligation under article 14 of the Covenant to allow an individual to be present at the hearing, even if the person is a non-resident alien.[104] In this particular case, however, the Committee did not find a violation of the Covenant as the petitioner's attorney did not request a postponement of the hearing for the purpose of enabling the petitioner to participate in person.[105]

34. The following communications to the Human Rights Committee were decided on procedural grounds and further demonstrate the types of complaints alleged by aliens under the Optional Protocol to the International Covenant on Civil and Political Rights.

35. For example, at its ninth session in 1980, the Human Rights Committee considered a communication, *Larry James Pinkney v. Canada*,[106] in which a United States citizen alleged that Canadian deportation proceedings were not impartial and therefore in violation of Canada's obligations under article 13 of the International Covenant on Civil and Political Rights.[107] Among other grounds, the Canadian Government objected to the admissibility of this claim because article 13 of the Covenant applies only to "an alien lawfully in the territory of a State party" and Mr. Pinkney was not in Canada lawfully.[108] In adopting its views, the Human Rights Committee considered the communication inadmissible because domestic remedies had not been fully exhausted.[109]

36. In 1981, the Human Rights Committee considered a communication, *Anna Maroufidou v. Sweden*,[110] in which the author of the communication, a Greek citizen, alleged that her expulsion under the Swedish Aliens Act was not in accordance with law, as required under article 13 of the International Covenant on Civil and Political Rights.[111] The Human Rights Committee, in adopting the view that the facts did not disclose any violation of the Covenant, noted that the interpretation of domestic law is essentially a matter for the courts and authorities of the State party concerned, and not within the functions of the Human Rights Committee to review.[112]

37. At its sixteenth session in 1982, the Human Rights Committee considered a communication, *A.M. v. Denmark*,[113] in which a Pakistani national alleged that the decision of Danish authorities to deport him constituted degrading treatment and punishment.[114] The Human Rights Committee decided that the communication was inadmissible because of a Danish reservation in respect of the competence of the Human Rights Committee to consider a communication from an individual when the matter has already been considered under other procedures of international investigation, in this case the European Commission on Human Rights.[115]

38. At its twenty-third session in 1984, the Human Rights Committee considered a communication, *M. F. v. The Netherlands*.[116] The author, a Chilean national, alleged, *inter alia*, that expulsion would deprive him of equality before the law in regard to an appellate hearing concerning the rejection of his claim for asylum.[117] The Committee decided that the facts did not substantiate the author's claim that the Netherlands had breached any obligation; therefore, the communication was inadmissible.[118]

39. At its twenty-ninth session in 1987, the Human Rights Committee considered a communication, *F.G.G. v. The Netherlands*.[119] The author of the communication, a Spanish citizen, alleged discriminatory termination from his employment, and unsuccessfully sought protection from the termination in a civil proceeding. The Netherlands Government observed that "article 26 of the Covenant does entail an obligation to avoid discrimination [between citizens and non-citizens], but that this article can only be invoked ... in the sphere of civil and political rights" whereas the civil proceedings brought in this instance involved rights in the economic and social sphere which was outside the competence of the Human Rights Committee under the Optional Protocol to the International Covenant on Civil and Political Rights.[120] The Committee decided that the communication was inadmissible at the time because the author had not exhausted all domestic remedies available.[121]

40. In 1988, the Human Rights Committee considered a communication, *V.M.R.B. v. Canada*.[122] A citizen of El Salvador alleged that "the Canadian Government's manoeuvres constitute discrimination against foreign citizens. An alien may not express his opinions, thoughts or convictions, for in exercising these rights he will not receive the same treatment as a Canadian citizen ... . The alien cannot enjoy the same protection for his opinions as a citizen expressing the same views."[123] In rejecting the communication as inadmissible, the Human Rights Committee noted that "[w]ith respect to articles 2 and 26 of the Covenant, the author has failed to establish how the deportation of an alien on national security grounds constitutes discrimination."[124]

41. At its fiftieth session in 1994, the Human Rights Committee considered a communication, *S.B. v. New Zealand*.[125] The author of the communication, a British subject, claimed that the New Zealand Social Security Act discriminated against foreign immigrants.[126] The Human Rights Committee noted that the legislation applies to all persons receiving benefits pursuant to the Act regardless of nationality and, thus, that the author did not substantiate, for purposes of admissibility, that he was a victim of discrimination.[127]

42. At its fifty-third session in 1995, the Human Rights Committee considered a communication, *Francis Peter Perera v. Australia*.[128] An Australian citizen by naturalization complained that the Australian police discriminated against him on the basis of his race and national origin.[129] In determining that the communication was inadmissible, the Committee noted that it could not examine the allegation of discrimination because the purported events occurred before the entry into force of the Optional Protocol for Australia.[130]

43. At its fifty-eighth session in 1996, the Human Rights Committee considered a communication, *Mrs. Brigette Lang v. Australia*.[131] A German citizen complained that the

Australian courts are biased against immigrants.[132] In determining that the communication was inadmissible, the Committee observed "that the allegations of discrimination and bias on the part of the Australian courts have not been substantiated."[133]

44. At its fifty-sixth session in 1996, the Human Rights Committee considered a communication, *Vladimir Kulomin v. Hungary*.[134] The Committee ultimately decided that there was no substantiation for the author's claim that he had been discriminated against on the basis of his nationality.[135]

45. At its sixty-first session in 1997, the Human Rights Committee considered a communication, *Lazar Kalaba v. Hungary*.[136] An Australian citizen complained that in rejecting his claim for compensation under Act XXXII of 1992 for his internment in the Sárvár concentration camp, Hungary discriminated against him on the basis of his nationality.[137] The Committee decided that the communication was inadmissible at the time because the author had not exhausted all domestic remedies available.[138]

B. Human Rights Committee concluding observations

46. The Human Rights Committee has also adopted a number of concluding observations and comments regarding the rights of non-citizens under the Covenant.

47. In 1994 the Human Rights Committee reviewed the periodic report of Nepal.[139] The Committee adopted a concluding observation in which it, *inter alia*, voiced concern that the Nepalese Constitution apparently provided rights and freedoms only to Nepalese citizens.[140] The Committee stressed that Nepal had an obligation to ensure to all individuals within its jurisdiction the rights and freedoms recognized in the Covenant.[141]

48. In 1995 the Human Rights Committee considered the periodic report of Latvia.[142] The Committee expressed concern regarding the rights of non-citizens and noted that the periodic report did not make it clear how the rights of resident non-citizens were guaranteed in accordance with article 2, paragraph 1, of the Covenant.

49. Also in 1995, the Human Rights Committee issued its concluding observations on the initial report of Estonia.[143] The Committee noted that numerous rights and prerogatives, such as the right to participate in the process of land privatization and the right to occupy certain posts or practise certain occupations, are granted solely to Estonian citizens. The Committee expressed its concern that permanent residents who are non-citizens are thus deprived of a number of rights under the Covenant. The Committee therefore recommended that all provisions in domestic law discriminating against non-citizens be systematically reviewed and brought into line with articles 2 and 26 of the Covenant.

50. In 1995 the Human Rights Committee further considered the periodic report of Estonia.[144] The Committee repeated many of the concerns summarized in the previous paragraph, but it also noted that non-citizen status affects a large population of Russian-speaking permanent residents who are unable to acquire Estonian citizenship due to strict language and other criteria.

51. Regarding the periodic report of Gabon considered in 1996,[145] the Committee expressed concern regarding the rights of non-Gabonese citizens and refugees living in Gabon. The Committee was concerned about legal impediments to their freedom of movement within the country as well as the requirement of an exit visa for foreign workers, which it noted runs counter to the provisions in article 12 of the Covenant. The Committee recommended that existing provisions such as article 1, paragraph 3, of the Gabonese Constitution limiting or restricting the exercise of the right to freedom of movement for non-Gabonese citizens, including the requirement of exit visas, should be reviewed to bring the legislation fully into conformity with article 12 of the Covenant.

52. With regard to the periodic report of Zambia in 1996,[146] the Committee noted with concern that the equality clause in section 11 of the Constitution and the non-discrimination clause in section 23 do not apply to non-citizens and that there are other exemptions in section 23 which are not compatible with articles 2 and 26 of the Covenant.

53. The Committee considered the periodic report of Lithuania in 1997. This consideration resulted in a concluding observation[147] in which the Committee noted that certain rights provided in the Constitution of Lithuania are limited to citizens. In this regard, the Committee recommended that the relevant legislation be reviewed in order to ensure that there is no arbitrary discrimination against aliens since such discrimination is incompatible with the provisions of articles 2 (1) and 26 of the Covenant.

54. In 1998 the Human Rights Committee issued its concluding observation on the report of Israel.[148] The Committee regretted that the Israeli authorities appeared to be placing obstacles in the way of family reunion in the case of marriages between an Israeli citizen and a non-citizen who is not Jewish (and therefore not entitled to enter under the Law of Return). These obstacles, which include long waiting periods for entry permits, a "probation" period of over five years' residence to establish that the marriage is genuine, and a further waiting period for citizenship, the Committee noted, are applied even more rigorously in the case of Arab citizens, particularly those who marry persons resident in the occupied territories. The Committee considered such obstacles to be incompatible with articles 17 and 23 of the Covenant. It recommended that the Government reconsider its policies with a view to facilitating family reunion of all citizens and permanent residents.

55. In considering the periodic report of Japan[149] that same year, the Committee expressed concern about instances of discrimination against members of the Japanese-Korean minority who are not Japanese citizens, including the non-recognition of Korean schools.[150] The Committee drew attention to its General Comment No. 23 (1994) which stresses that protection under article 27[151] cannot be restricted to citizens.[152]

56. During 1998, in reviewing the report of Armenia,[153] the Committee noted with concern that the Armenian Constitution guaranteed the right to freedom of movement only to citizens. The Committee pointed out that this restriction contravened article 12 of the Covenant.[154]

57. In 1999, the Committee reviewed the fourth periodic report of Mexico[155] and expressed concern at obstacles to the free movement of non-citizens.[156] These obstacles, however, pertained especially to members of non-governmental organizations on human rights fact-finding missions.

58. Also in 1999 the Committee considered the initial periodic report of Cambodia.[157] In doing so, the Committee was concerned that "equality rights" and other provisions of the Cambodian Constitution apply only to "Khmer citizens."[158] The Committee stressed that rights protected by the Covenant are to be enjoyed by all citizens.

59. In 2000 the Human Rights Committee considered the fourth periodic report of Denmark.[159] In doing so, the Committee expressed concern that Immigration Authorities may require DNA examination from immigration applicants and from persons with whom the respective applicant claims the family ties on which a residence permit is to be based.[160] The Committee stressed that DNA testing may have important implications for the right of privacy under article 17 of the Covenant and that Denmark should ensure that such testing is used only when necessary and appropriate to the determination of the family tie on which a residence permit is based.[161]

60. In considering the same periodic report of Denmark, the Committee noted that asylum-seekers in Denmark are often restricted or discouraged from choosing residence in specific municipalities or from moving from one municipality to another.[162] The Committee stated that Denmark should ensure that any such measures, as applied, are in strict compliance with article 12 of the Covenant.[163]

61. Also in 2000, the Committee considered the second periodic report of Gabon[164] and noted that as regard the rights of non-Gabonese citizens and refugees living in Gabon, foreign workers are still required to have exit visas, in contravention of article 12 of the Covenant, and recommended that Gabon do away with that requirement.[165]

IV. COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (CESCR)

CESCR concluding observations

62. The Committee on Economic, Social and Cultural Rights has considered numerous reports submitted by States parties under articles 16 and 17 of the Covenant regarding its implementation and the situation of non-nationals, including refugees and immigrants.

63. In 1993, after considering the periodic report of Senegal,[166] the Committee noted that foreign workers were barred from holding trade union office and that authorities may unduly restrict their right to strike. The Committee noted further that these restrictions may violate article 8 of the Covenant. The Committee therefore recommended that Senegal amend its national legislation with a view to eliminating those restrictions.

64. In 1994, the Committee on Economic, Social and Cultural Rights considered the periodic report of Austria.[167] The Committee was concerned about the adverse consequences of a then new law on residence and residency permits and the conditions necessary to acquire such permits. The Committee was particularly concerned about how residency permits affect and are affected by housing.

65. In 1995, the Committee on Economic, Social and Cultural Rights considered the periodic report of Ukraine,[168] in which it expressed concern that social services were not adequate to insure a minimum standard of living for the most vulnerable groups, including non-citizens.[169]

66. At its 50th meeting in 1996, the Committee on Economic, Social and Cultural Rights adopted comments regarding the report submitted by the Dominican Republic.[170] The Committee was particularly concerned about the exploitation of Haitians and their unacceptable living conditions.[171] It noted that Haitians live in perpetual insecurity and that they are subject to deportation in inhuman conditions. The Committee recommended that the Dominican Republic "adopt clear legislation on nationality, which would procure legal security to persons of Haitian origin born in the Dominican Republic and to their children; which would require the authorities to register births without discrimination; and which would allow Haitians to obtain Dominican nationality through naturalization under the same conditions as other foreigners."[172]

67. At its 51st meeting in 1996, the Committee on Economic, Social and Cultural Rights adopted concluding observations regarding the report submitted by Finland.[173] The Committee expressed concern at the high level of unemployment among immigrants and refugees, despite recent decreases in the percentage of the general population who are unemployed.[174] It emphasized the need to protect the rights of socially vulnerable groups, including refugees.[175] The Committee expressed concern at reports that the Roma minority had been the subject of discrimination in decisions regarding public housing.[176] The Committee called upon authorities to eliminate discrimination of any kind in exercising the rights of the Covenant, especially the right to housing.[177]

68. The Committee on Economic, Social and Cultural Rights considered the report submitted by Spain[178] and adopted concluding observations at its twenty-second session, held in 1996. The Committee noted "with great concern the growth in the number of acts of discrimination and racism against foreigners in Spain, particularly directed at groups from North Africa, asylum-seekers, illegal workers, and the Romany (Gypsy) population."[179] It urged Spain to take appropriate preventive and penal measures effectively to combat all forms of racial discrimination.[180]

69. At its 53rd meeting in 1997, the Committee on Economic, Social and Cultural Rights considered the report submitted by Iraq.[181] The Committee expressed "concern about reports of discrimination against members of certain minorities, and especially the Kurds, Marsh people, Assyrians, Shi'a Muslims, and Turkomans, with respect to their enjoyment of rights under the Covenant."[182] The Committee noted that the payment of benefits abroad to a citizen of another country will only be ensured if he returns to his country of origin at the end of his insured period of service and this provision precludes workers who leave Iraq before their contract period has expired or who settle in a country other than their country of origin from receiving their

benefits.[183] The Committee recommended that Iraq take measures, in accordance with article 2, paragraph 2, of the Covenant, to guarantee the rights enunciated in the Covenant without discrimination.[184]

70. In 1997, the Committee on Economic, Social and Cultural Rights also considered the report of the Libyan Arab Jamahiriya.[185] The Committee expressed its concern at reports that foreign workers in Libya are living and working in appalling conditions.[186] According to a report of the International Labour Organization (ILO), foreign employees in Libya who are accused of infringing disciplinary rules may be punishable by penalties of imprisonment which can include compulsory labour.[187] According to the same ILO report, Libya also maintains different rates of payment of pensions for foreign and Libyan workers, which the Committee viewed as discriminatory.[188] The Committee also expressed its concern at reports that "during the second half of 1995 thousands of foreign workers were arbitrarily expelled from [Libya] and were not given adequate compensation."[189] It further noted that there was no possibility for a legal or judicial remedy against those expulsions. The Committee recommended that "the status and working conditions of foreign workers be improved and without undue delay, and that these persons be treated with dignity and fully benefit from the rights enumerated in the Covenant."[190] The Committee further recommended that foreign workers who are employed in Libya with valid work permits "should not be deported if they become HIV-positive while in the country."[191]

71. Also in 1997, the Committee on Economic, Social and Cultural Rights considered the report submitted by the United Kingdom of Great Britain and Northern Ireland.[192] The Committee welcomed the "adoption of the Hong Kong Order 1997 which entitles Hong Kong citizens who are not allowed to acquire Chinese nationality to receive United Kingdom citizenship."[193] The Committee adopted the view that "despite the elaborate machinery and legislation for protection against discrimination, there continues to exist to a significant degree ... de facto discrimination against women, Blacks, and other ethnic minorities."[194] It also noted the persistence of a substantially higher rate of unemployment among Blacks, Catholics in Northern Ireland, and other ethnic minorities and their disproportionate numbers in lesser paid jobs.[195]

72. At the eighteenth session in 1998, the Committee on Economic, Social and Cultural Rights considered the report of the Netherlands[196] and noted that a major challenge facing the Government in relation to the implementation of the Covenant is posed by the number of foreign workers in the territory.[197] The Committee observed that racial discrimination exists in labour matters, contributing to some extent to unemployment among immigrants.[198] The Committee encouraged the Netherlands to continue its efforts to eliminate "racial discrimination in the labour market with a view to facilitating the integration of immigrants and their families into the national life."[199]

73. The Committee on Economic, Social and Cultural Rights made concluding observations regarding the report submitted by Nigeria[200] at the same session. The Committee expressed its regret that Nigeria expelled "an estimated half a million Chadian and ... workers [of other nationalities] in inhuman and undignified circumstances, even those among them who had been

legally established for many years with residence permits in Nigeria and had participated in and contributed to the social security system."[201] It noted that the majority of those expelled workers have not been adequately compensated.[202]

74. At the same session, the Committee on Economic, Social and Cultural Rights made concluding observations regarding the report of Poland.[203] The Committee recommended that "the 1962 citizenship law, which discriminates against women by not granting them the same right as men to transmit citizenship to their foreign-born spouses, be abolished."[204]

75. At the same session, the Committee on Economic, Social and Cultural Rights considered the report of Sri Lanka[205] and adopted the view that discrimination in relation to the economic, social and cultural rights of ethnic groups remains the central issue in the armed conflict in Sri Lanka.[206] The Committee expressed "concern that the distinction contained in the current Constitution between 'citizens' and 'other persons' with respect to the right to equality, has not been removed from the proposed revised Constitution [then] before Parliament."[207] The Committee noted with concern the uncertain situation of 85,000 Tamils of Indian origin living in Sri Lanka because "they possess neither Indian nor Sri Lankan citizenship, have no access to basic services such as education, and do not enjoy their economic, social and cultural rights."[208] The Committee welcomed Sri Lanka's plans to award citizenship to the stateless Tamils and requested an update regarding that situation in the next periodic report.[209]

76. At its nineteenth session held in 1998, the Committee on Economic, Social and Cultural Rights adopted concluding observations regarding the report submitted by Canada.[210] The Committee expressed concern regarding "the plight of thousands of 'Convention refugees' in Canada, who cannot be given permanent resident status for a number of reasons, including the lack of identity documents, and who cannot be reunited with their families for a period of five years."[211] The Committee also noted concern that loan programmes for post-secondary education are available only to Canadian citizens and permanent residents. In addition, the Committee noted that refugees and asylum-seekers who do not have permanent residence status are ineligible for those loan programmes.[212] The Committee urged Canada to develop and expand adequate programmes to address the financial obstacles to post-secondary education for low-income students, without any discrimination on the basis of citizenship status.[213]

77. The Committee on Economic, Social and Cultural Rights also considered the report submitted by Cyprus[214] at the nineteenth session. The Committee expressed concern at the continued existence of discrimination between men and women, including inequalities in, among other things, "the transmission of nationality to children and the conferment of refugee status on children (only children of displaced men are so treated)."[215] The Committee recommended that Cyprus abolish such discriminatory laws as soon as possible.

78. The Committee on Economic, Social and Cultural Rights adopted concluding remarks at the same session regarding the report submitted by Germany.[216] The Committee expressed concern about the plight of the Sinti and Roma (Gypsies) in Germany and about their enjoyment of the rights to housing, education, and employment.[217] The Committee called for immediate remedial policies and measures to address discrimination against Gypsies in Germany.[218] The Committee noted that unemployment was particularly high in Germany and that women and

foreigners are most affected.[219] The Committee requested that Germany take immediate measures to address and redress the situation of asylum-seekers, and that refugees be accorded health, economic, and educational rights in accordance with the Covenant.[220]

79. At the same session, the Committee on Economic, Social and Cultural Rights considered the report submitted by Israel.[221] The Committee expressed concern at the widespread discrimination against Arab citizens of Israel, and their exclusion from the enjoyment of their economic, social and cultural rights.[222] The Committee expressed alarm that only half of the workers entitled to the minimum wage actually receive it, and that foreign workers, Palestinians, and "manpower contractor" workers are particularly vulnerable in this regard.[223] The Committee noted with concern that "the Law of Return, which allows any Jew from anywhere in the world to immigrate and thereby virtually automatically enjoy residence and obtain citizenship in Israel, discriminates against Palestinians in the diaspora upon whom the Government of Israel has imposed restrictive requirements which make it almost impossible to return to their land of birth."[224] In order to ensure equality of treatment and non-discrimination, the Committee encouraged Israel to review its laws and bring them into line with the Covenant.[225]

80. At the same session, the Committee on Economic, Social and Cultural Rights considered the report of Switzerland[226] and adopted the view that "despite the existence of legislation providing protection against discrimination, de facto discrimination against women and ethnic minorities continues to exist."[227] The Committee noted the large number of foreigners residing in Switzerland and welcomed the measures taken by the authorities to ensure the enjoyment of their economic, social and cultural rights.[228] The Committee encouraged Switzerland to play a more active role in promoting equal access to higher education for women, immigrants, and ethnic minorities.[229]

81. At its twentieth session in 1999, the Committee on Economic, Social and Cultural Rights addressed the report of Argentina.[230] The Committee welcomed the information that Argentina has signed immigration agreements with Bolivia and Peru in order to regularize the situation of citizens of those countries in Argentina.[231]

82. At the same session, the Committee on Economic, Social and Cultural Rights considered the report submitted by Armenia.[232] The Committee noted with satisfaction the equal treatment of refugees and Armenian citizens in the exercise of economic, social and cultural rights.[233]

83. Also at its twentieth session in 1999, the Committee on Economic, Social and Cultural Rights adopted concluding observations regarding the report submitted by Bulgaria.[234] The Committee "deplored ... the discrimination against the Roma minority in many aspects of life, including education, work, social benefits, and access to land."[235] The Committee was especially concerned about the high rate of unemployment among the Roma minority and the poor quality of education afforded to this group.[236] The Committee noted with regret that Bulgaria does not have any procedure through which minorities can voice complaints about the status of their enjoyment of economic, social and cultural rights.[237] The Committee noted the measures taken to alleviate the situation of asylum-seekers and refugees, such as the adoption of a new law on refugees and the construction of a new centre for asylum-seekers, and urged Bulgaria to implement fully the law reforms.[238]

84. At the same session, the Committee on Economic, Social and Cultural Rights considered the report of Denmark.[239] The Committee acknowledged the social assistance benefits being accorded to refugees, including the provision of temporary housing.[240] The Committee also noted the efforts made by Denmark to integrate foreign workers and their families.[241] The Committee noted with concern an emerging trend of intolerance and violence against minority groups and foreigners, and recommended that Denmark monitor the situation to combat such acts of violence effectively.[242] The Committee recommended that Denmark "carefully monitor the impact of the new Alien Immigration Act and urge[d] it to take urgent remedial action if the legislation proves to have a discriminatory effect upon refugees."[243] The Committee also urged Denmark to take all appropriate measures to reduce the level of unemployment of foreign nationals, immigrants, and refugees.[244]

85. The Committee on Economic, Social and Cultural Rights adopted concluding observations at the same session regarding the report submitted by Iceland.[245] The Committee noted Iceland's intention to amend Act No. 133/1994 on the Right of Foreigners to Work in Iceland in order to eliminate the discrimination currently existing between nationals of European Economic Area (EEA) countries and those of other countries, as well as the discrimination between spouses of nationals of EEA countries and those of non-EEA countries.[246] In recognizing positive aspects, the Committee noted that "persons belonging to EEA countries enjoy the special privilege of obtaining work permits, unemployment benefits and social security benefits for their spouses or children who are non-EEA citizens."[247] In addition, refugees admitted to Iceland not only have the right to obtain work permits but, unlike non-EEA citizens, are not subject to a six-month waiting period before acquiring entitlement to health-care benefits.[248]

86. In considering the report submitted by Ireland[249] at the same session, the Committee welcomed the adoption of the Employment Equality Act of 1998 and the Equal Status Bill of 1998 which aimed at removing several aspects of discrimination, including race, colour, nationality, national or ethnic origin, and membership of the traveller community.[250] The Committee noted with regret that Ireland had not yet ratified the International Convention on the Elimination of All Forms of Racial Discrimination and urged its immediate ratification.[251] It also noted that article 40.1 of the Constitution contains provisions that appear to be inconsistent with the principle of non-discrimination as set out in articles 2 and 3 of the Covenant.[252] The Committee urged Ireland to expedite the enactment of legislation to combat discrimination affecting the traveller community.[253]

87. In 2000 the Committee considered the third periodic report of Portugal.[254] In doing so the Committee expressed its concern about cases of intolerance of and discrimination against Roma people, refugees, and immigrants.[255] The Committee also noted with concern that foreign workers cannot enrol in the vocational guidance and training courses to which Portuguese workers are entitled[256] and therefore urged Portugal to allow foreign workers to enrol.[257]

88. With respect to the fourth periodic report of Finland,[258] also considered in 2000, the Committee recommended that the State party ensure that legislative provisions concerning job security are effectively implemented, especially as regards the most vulnerable groups, including foreigners.[259]

89. In considering the second periodic report of Jordan[260] in 2000 the Committee expressed its concern about discriminatory treatment under the civil law, such as restrictions on the right of Jordanian women married to foreign men to pass on their nationality to their children.[261] The Committee therefore recommended that Jordan incorporate in its legal order the prohibited grounds of discrimination in accordance with article 2 (2) of the Covenant, in particular, race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status,[262] and to take all effective legal measures to prohibit discrimination on grounds of sex in all fields of civil, political, economic, social, and cultural life.[263]

V. COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN (CEDAW)

CEDAW concluding observations

90. CEDAW has made relevant concluding observations and comments with regard to a number of countries following its examination of their reports submitted in accordance with the Convention on the Elimination of All Forms of Discrimination against Women.

91. In 1994 CEDAW considered the second and third periodic reports of Japan.[264] In doing so, the Committee noted that the report lacked sufficient information regarding women who were non-citizens of Japan and expressed its concern about the sexual exploitation of foreign women.[265] The Committee pointed out that Japan's commitment to the Convention required it to ensure the protection of the full human rights of all women, including foreign and immigrant women.[266]

92. In considering the initial periodic report of Morocco[267] in 1997, CEDAW was concerned that the law relating to the ability to pass on one's nationality benefited the father to the detriment of the mother.[268]

93. In 1997 CEDAW, in considering the initial and second periodic reports of Luxembourg,[269] expressed concern about the fact that no adequate steps had been taken to ensure that the large population of foreign women were able to take advantage of the guarantees under the Convention.[270]

94. CEDAW considered the report of Algeria[271] at its twentieth session in 1999. CEDAW was concerned that mothers in Algeria cannot transmit their nationality to their children in the same way that fathers can.[272] The Committee noted that "citizenship is a fundamental right which men and women must be able to enjoy equally."[273] CEDAW recommended the revision of legislation governing nationality in order to make it more consistent with provisions of the Convention.[274]

95. CEDAW considered the reports of Spain[275] at its twenty-first session in 1999. CEDAW was concerned at the situation of "foreign women workers in domestic service, asylum-seekers and women who may be living clandestinely in Spain."[276] It was concerned that these women may lack adequate protection from violence and abuse.[277] CEDAW recommended that the

situation of these women workers be assessed in greater depth, including the legislative provisions governing their employment, and that Spain take measures to improve the level of literacy, including legal literacy, of these women.[278]

96. In 2000 CEDAW considered the combined second and third periodic reports of Iraq.[279] In doing so, CEDAW expressed concern that Iraq's nationality law does not grant women an independent right to acquire, change, or retain their nationality or to pass it on to their children.[280]

97. Similarly, in examining the first and second periodic reports of Jordan[281] in 2000, CEDAW expressed concern that Jordanian nationality law prevents a Jordanian woman from passing on her nationality to her children if her husband is not Jordanian.[282]

98. Also in 2000 CEDAW considered the combined second and third periodic reports of Germany.[283] CEDAW expressed concern about the often precarious social and economic situation of foreign women living in Germany.[284] CEDAW also expressed concern at the incidence of xenophobic and racist attacks in the State party and noted the vulnerabilities that foreign women can face on the multiple grounds of sex, ethnicity, and race.[285] Noting the Government's intention to commission a study on the living situation and social integration of foreign women and girls, CEDAW requested the Government to undertake a comprehensive assessment of the situation of foreign women, including their access to education and training, work and work-related benefits, health care and social protection, and to provide such information in its next report.[286] CEDAW also recommended that Germany take steps to increase foreign women's awareness about the availability of legal remedies and means of social protection.[287]

VI. COMMITTEE ON THE RIGHTS OF THE CHILD (CRC)

CRC concluding observations

99. The Committee on the Rights of the Child has made concluding observations and comments on the rights of non-citizen children with regard to several countries, reflecting its mandate to foster implementation of the Convention on the Rights of the Child.

100. During its consideration of the initial periodic report of Pakistan in 1994, the Committee noted that national legislation does not appear to ensure that all children, including non-citizens, are protected by the rights guaranteed under the Convention.[288]

101. In considering the initial periodic report of Sweden in 1993, the Committee was concerned at the practice of taking foreign children into custody under the Aliens Act and noted that this practice is discriminatory insofar as Swedish children generally cannot be placed in custody until after the age of 18.[289] The Committee therefore suggested that consideration be given to providing alternatives to the incarceration of children under the Aliens Act.[290]

102. In 1994 the Committee considered the initial periodic report of Jordan.[291] The Committee expressed concern that, although the National Charter guarantees equality between the sexes in Jordan, discriminatory attitudes and prejudices still occur in the society, and that

there are still disparities in practice, in particular with regard to inheritance rights, the right to leave the country, and the acquisition of Jordanian nationality.[292] In this last respect, the Committee is concerned that in the light of Jordanian legislation, cases of statelessness might arise.[293]

103. With respect to the initial periodic report of Denmark in 1995, the Committee, with regard to the situation of refugee children and children seeking asylum, suggested that the State party consider reviewing its Alien Act as regards its compatibility with the provisions and principles of the Convention, including those contained in its article 10 which stipulates that applications for family reunification should be handled in a positive, humane, and expeditious manner.[294] Similarly, with regard to the provision of health and education services to children in asylum-seeking situations, the Committee drew attention to the provisions of article 2 of the Convention which state, *inter alia*, that "States parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction."[295]

104. In considering the initial periodic report of the United Kingdom of Great Britain and Northern Ireland in 1995, the Committee, with regard to article 2 of the Convention relating to non-discrimination, expressed its concern at the insufficient measures undertaken to ensure its implementation. In particular, it was concerned about the possible adverse effects on children of the restrictions applied to unmarried fathers in transmitting citizenship to their children, in contradiction of the provisions of articles 7 and 8 of the Convention.[296]

105. The Committee also considered the periodic report of Italy in 1995.[297] With regard to article 2 of the Convention relating to non-discrimination, the Committee expressed its concern that sufficient measures have not been taken to assess and provide for the needs of children from vulnerable and disadvantaged groups, such as children from poor families and from single-parent households, children of foreign and Roma origin, and children born out of wedlock.[298] The Committee was concerned that children belonging to these disadvantaged groups seem more likely to be stigmatized in public perception, to drop out of school, to be employed in clandestine work or even in illegal activities, including organized criminal activities.[299] The Committee also noted that further measures should also be taken to prevent a rise in discriminatory attitudes and prejudices towards particularly vulnerable children such as children living in poverty, children from the southern region, Roma children, and foreign children.[300] The Government should consider adopting a more active stand and coherent policy with respect to the treatment of these children and to create an environment favourable to their fullest possible integration into Italian society.[301] Comprehensive measures should be provided for responsible parenthood and for support to needy families, in order to assist them in their child-rearing responsibilities in the light of articles 18 and 27 of the Convention, thus limiting family disruption, reducing the numbers of institutionalized children, and limiting the recourse to institutionalization to a measure of last resort.[302]

106. The Committee considered the periodic report of Lebanon in 1996[303] and expressed concern with the apparent discrimination in the granting of nationality to a child of parents of mixed nationality; nationality may only be obtained by a child from her/his Lebanese father but not from the mother and, in the case of unmarried parents, only if the Lebanese father acknowledges the child.[304]

107. The Committee considered the periodic report of the Libyan Arab Jamahiriya in 1998.[305] The Committee was especially concerned about discrimination against migrant and other non-citizen children.[306] The Committee therefore recommended that the Libyan Arab Jamahiriya take all necessary measures to ensure that all children within its jurisdiction enjoy the rights protected by the Convention.

108. The Committee also considered the initial periodic report of Kuwait in 1998.[307] The Committee expressed concern at the existence of laws that discriminated against non-Kuwaiti children, and in particular girls, especially with regard to education and inheritance.[308] The Committee noted that the Convention requires State parties to ensure the implementation of all rights under the Convention to each child within its jurisdiction.[309] The Committee therefore recommended that Kuwait take all appropriate measures to safeguard the rights of all children, including Bedoon children, migrant children, and other non-Kuwaiti citizens particularly with regard to education, health, and other social services.[310]

109. The Committee on the Rights of the Child considered the report of Austria[311] at its twentieth session in 1999. The Committee was concerned about inconsistencies between domestic legislation and the principles and provisions of the Convention, especially with regard to the right to family reunification and some rights of immigrant, asylum-seeking, and refugee children.[312] The Committee was seriously concerned regarding legislation permitting the detention of asylum-seeking children pending deportation.[313] The Committee urged Austria to reconsider the practice of detaining asylum-seeking children, and that such children be treated in accordance with the best interests of the child.[314] The Committee noted continuing concern regarding social and other discrimination faced by children belonging to the Roma community and other minorities, "in particular by those belonging to groups that do not enjoy the constitutional status of 'ethnic groups'."[315] The Committee recommended that Austria "take all appropriate measures to protect and ensure the rights of Roma, Sinti, and other minority children, including protection from all types of discrimination, in accordance with articles 2 and 30 of the Convention."[316]

110. At the same session, the Committee on the Rights of the Child considered the report of Belize.[317] While the Committee noted that the principle of non-discrimination in article 2 is reflected in the Constitution and other domestic legislation, it was concerned that insufficient measures have been adopted to ensure that all children are guaranteed access to education and health services and are protected against all forms of exploitation.[318] In this regard, the Committee was particularly concerned about certain vulnerable groups of children, including refugee and asylum-seeking children, and illegal immigrant children.[319] The Committee recommended that Belize increase its efforts to ensure implementation of the principle of non-discrimination and full compliance with article 2 of the Convention, particularly as it relates to those vulnerable groups.[320] The Committee also noted that child labour and economic exploitation are matters of concern, "particularly the situation of immigrant children working in the banana industry."[321] It recommended that Belize adopt measures to regularize the situation of immigrant children and provide them with documentation to guarantee their rights and facilitate their access to basic health, education, and other services.[322]

111. The Committee on the Rights of the Child also considered the report of Guinea[323] in 1999. The Committee was concerned that Guinea has not adequately implemented article 2 as

insufficient measures have been adopted to ensure that all children fully enjoy the rights recognized in the Convention.[324] The Committee welcomed Guinea's willingness to host refugees from bordering African States, but expressed concern at the limited capacity of the State party to protect and guarantee the rights of unaccompanied and refugee children.[325] The Committee noted "[t]he absence of a legal and administrative framework to protect their rights; the fact that most refugee births are not registered; the lack of alternative care measures for unaccompanied refugee children; and the arbitrary detention of refugee children are matters of concern."[326] The Committee also expressed concern at the increasing phenomenon of trafficking and sale of children into neighbouring countries for work or prostitution.[327] The Committee recommended that Guinea review its legal framework, strengthen law enforcement, and consider cooperation with neighbouring countries to prevent cross-border trafficking.[328]

112. At the same session, the Committee on the Rights of the Child considered the report of Sweden.[329] The Committee welcomed the decision of Sweden to "review legislation setting a lower age for marriage for children resident in or nationals of other States."[330] The Committee recommended that Sweden "consider changes in legislation with a view to increasing protection against the harmful effects of early marriage and to eliminating discrimination among children within its jurisdiction."[331] With regard to article 2 of the Convention, the Committee noted with concern that the principle of non-discrimination is not fully implemented for the children of illegal immigrants.[332] The Committee recommended that Sweden expand the services available to illegal-immigrant children beyond the provision of emergency health services.[333] It also expressed concern about reports of increased racism and xenophobia and urged Sweden to take all appropriate measures to ensure that the child is protected against all forms of discrimination.[334] The Committee expressed concern about existing legislation regarding stateless children and its compliance with the right to acquire a nationality.[335] It encouraged Sweden to complete its revision of the Citizenship Act and urged that "resulting amendments fully take into account article 7 of the Convention."[336]

113. The Committee on the Rights of the Child considered the report of Yemen[337] in 1999 as well. With regard to implementation of article 2 of the Convention, the Committee expressed concern about the occurrence of discrimination affecting disadvantaged groups of children including refugee children, *Akhdam* children, and children belonging to nomadic groups.[338] The Committee welcomed Yemen's openness to hosting refugees from the Horn of Africa; however, it was concerned at the limited capacity of the State party to protect and guarantee the rights of unaccompanied and refugee children.[339] The Committee recommended that Yemen "ensure adequate legal protection to refugee children, including the guarantee of their physical safety and access to health and education."[340]

114. With respect to the initial report of the Central African Republic[341] considered in 2000, the Committee expressed concern at violations of the right to a nationality for children whose birth has not been registered or for children born in the State party and whose parents are not nationals of the State party.[342] The Committee noted that while children can gain nationality from age 12, parents who are non-nationals have much greater difficulty in claiming nationality.[343] The Committee recommended that the Central African Republic examine concerns in the access of children to a nationality and make every effort to improve respect for this right, and recommended further that attention be given to the situation of children whose parents are unable to claim the State party's nationality.[344]

115. Also in 2000, the Committee considered the initial report of the United Kingdom of Great Britain and Northern Ireland – Overseas Territories.[345] The Committee was concerned that, while the new nationality policy of the United Kingdom provides full citizenship to nationals of the Overseas Territories, students from these Territories who wish to pursue further studies in the United Kingdom continue to pay more in tuition fees than those students from the United Kingdom.[346]

116. The Committee considered the initial periodic report of Cambodia[347] in 2000 as well. In doing so, the Committee recommended that Cambodia review its domestic legislation in accordance with the principles and provisions of the Convention, with a view to making birth registration compulsory for all children, without any type of discrimination, and that children of non-Khmer citizens, regardless of their legal status, or refugees, when born in Cambodia, should always be registered at birth even if they are not entitled to Cambodian nationality.[348]

117. In considering the second periodic report of Norway[349] in 2000, the Committee expressed concern that when decisions to deport foreigners convicted of a criminal offence are taken, professional opinions on the impact of such decisions upon the children of the deported persons are not systematically consulted and taken into consideration.[350]

118. In considering the second periodic report of Jordan[351] in 2000 the Committee remained concerned that restrictions on the right of a Jordanian woman to pass on her nationality to her child, particularly where she is married to a refugee, may result in the child becoming stateless.[352]

VII. EUROPEAN COURT OF HUMAN RIGHTS (ECHR)

ECHR jurisprudence

119. The European Court of Human Rights has considered the rights of non-citizens under article 8 of the Convention. Article 8 states that "(1) [e]veryone has the right to respect for his private and family life . . . [and] (2) [t]here shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security ... ."

120. The seminal judgement regarding article 8 occurred on 21 June 1988 in the case of *Berrehab v. the Netherlands*.[353] In *Berrehab*, the court defined for the first time the effect of article 8 on the deportation of non-citizens. The substance of the decision was that where the non-citizen has real family ties in the territory of the State from which he is ordered deported, and the deportation measure is such as to jeopardize the maintenance of those ties, the deportation is justified with regard to article 8 only if it is proportionate to the legitimate aim pursued. In other words, the deportation is justified only if the interference with family life is not excessive with respect to the public interest to be protected. The public interest often balanced against the right to respect for family life is the State's interest in maintaining public order and arises in the context of non-citizens convicted of criminal offences.

121. *Berrehab v. the Netherlands*, however, did not involve a criminal conviction. Mr. Berrehab, a citizen of Morocco, was married to a Dutch citizen and received residency status

on that basis. Mr. Berrehab and his spouse later divorced in 1979. Mr. Berrehab, however, had one daughter by the marriage and after the divorce was appointed as his daughter's auxiliary guardian and granted frequent and regular visitation with his daughter.

122. In 1983 Mr. Berrehab's residency permit was not renewed on account of the divorce and he was subsequently arrested and ordered deported. The court, applying the balancing test presented above, found that the deportation order violated article 8 of the Convention.

123. In 1991 the European Court of Human Rights considered *Beldjoudi v. France*[354] in which both the person sought to be deported and his spouse, who possessed French citizenship, challenged the deportation on the grounds that it would violate article 8. Mr. Beldjoudi was born in France, but he was considered an Algerian citizen. In the late 1960s and 1970s he was convicted of a number of offences including assault and battery, theft, aggravated theft, driving a vehicle without a licence, and possession of weapons. These convictions led to a deportation order being issued in 1979. The court considered a number of factors favourable to Mr. Beldjoudi, including that he was born in France and had had French nationality until 1 January 1963. He was deemed to have lost that nationality when he was still a juvenile and only because his parents neglected to reaffirm their French nationality pursuant to the Evian Agreements of 19 March 1962. The Evian Agreements of 19 March 1962 provided that persons born in Algeria while it was a French department, and thereby acquiring French citizenship, were deemed to have relinquished that citizenship if they did not make a declaration recognizing French nationality before 27 March 1967. Upon reaching adulthood he tried to re-establish his French nationality, he had served in the French military, and was married to a French citizen and his close relatives have resided in France for several decades. Upon consideration of these factors the Court held that the deportation order was not proportionate to the legitimate aim pursued and therefore violated both Mr. Beldjoudi's and his spouse's rights under article 8.

124. In 1996, the European Court of Human Rights considered article 8 in *C. v. Belgium*[355] which also dealt with the rights of non-citizens in the context of deportation. Mr. C, a Moroccan citizen, lived in Belgium from 1955 until his deportation was ordered in 1992 due to convictions for criminal damage, unlawful possession of drugs and conspiracy. Mr. C applied to the European Court of Human Rights to find a violation of article 8. The Court's task was to "determine whether the deportation struck a fair balance between the relevant interests, namely the applicant's right to respect for his private and family life, on the one hand, and the prevention of disorder and crime, on the other."[356] The Court found that Mr. C's expulsion was proper because it was not disproportionate to the legitimate aims pursued.[357] The Court attached great importance to the seriousness of Mr. C's crimes, and noted that:

> "[I]t is for the Contracting States to maintain public order, in particular by exercising their right, as a matter of well-established international law and subject to their treaty obligations, to control the entry and residence of aliens and notably to order the expulsion of aliens convicted of criminal offences."[358]

125. Mr. C also claimed to be a victim of discrimination on the grounds of race and nationality in violation of article 14 because "his deportation amounted to less favourable treatment than was accorded to criminals who, as nationals of a member State of the European Union, were protected against such a measure in Belgium."[359] The Court found there was no violation of

article 14 because such preferential treatment was "based on an objective and reasonable justification, given that the member States of the European Union form a special legal order, which has . . . established its own citizenship."[360]

126. In 1997, the European Court of Human Rights in *Bouchelkia v. France* dealt with similar issues regarding the rights of non-citizens.[361] Mr. Bouchelkia was born in Algeria in 1970, and emigrated to France with his mother at age two. In 1990, Mr. Bouchelkia was ordered deported because of a criminal conviction for rape in 1987. Mr. Bouchelkia applied to the European Court of Human Rights to find a violation of article 8 of the European Convention. The Court found no such violation. The Court concluded that the interference in Mr. Bouchelkia's family life "had aims which were entirely compatible with the Convention, namely 'the prevention of disorder or crime'."[362]

127. The seriousness of the crime, however, has been determinative under the article 8 analysis. For example, in *Moustaquim v. Belgium*[363] the European Court of Human Rights considered the case of a Moroccan national who immigrated to Belgium in 1965 when he was 22 months old. Mr. Moustaquim was convicted of a number of crimes including aggravated theft, robbery and assault. The crimes were committed while Mr. Moustaquim was a juvenile, but were referred to the Criminal Court after the Juvenile Division of the Court of Appeal relinquished jurisdiction after determining that juvenile procedures were not affecting Mr. Moustaquim's behaviour.

128. Mr. Moustaquim was ordered deported to Morocco in 1984 and took his case to the European Court of Human Rights alleging a violation of articles 8 and 14 of the Convention. As for article 14, Mr. Moustaquim alleged discrimination on the ground of nationality vis-à-vis juvenile delinquents of two categories: those who possessed Belgian nationality, since they could not be deported; and those who were citizens of another member State of the European Communities, "as a criminal conviction was not sufficient to render them liable to deportation."[364] The Court held that there was no violation of article 14 because Mr. Moustaquim was not similarly situated to Belgium nationals, who had a right to abode in their country of nationality. Also, he was found not similarly situated to nationals of other member States of the European Community because the latter's preferential treatment "is [an] objective and reasonable justification for [preferential treatment] as Belgium belongs, together with those States, to a special legal order."[365]

129. In the *Moustaquim* case, however, the Court did hold that the deportation violated article 8 of the Convention. The Court concluded that deportation "was disproportionate as the authorities had not achieved a just balance between the applicant's interest in maintaining a family life and the public interest in the prevention of disorder."[366] In doing so, the Court noted that to justify interference with the rights protected by paragraph 1 of article 8, namely the right to maintain a family life, the deportation must be, as stated in paragraph 2 of article 8, "necessary in a democratic society." The court interpreted this phrase as requiring a "pressing social need and, in particular, proportionate to the legitimate aim pursued."[367] The Court noted that the criminal convictions were for offences committed while Mr. Moustaquim was a juvenile, that the latest offence was committed in 1980, and that his family was living in Belgium for a long time and one member of the family had acquired Belgian citizenship.

130. Similarly, in 1996 the European Court of Human Rights considered *Nasri v. France*[368] involving an Algerian national convicted of rape and ordered deported. The Court balanced the seriousness of the crime against the State's interest in protecting the public order. In doing so, the Court noted that Mr. Nasri was found to be emotionally immature, easily influenced into aiding in the crime for which he was ordered deported, and received a relatively light sentence. In addition to weighing the seriousness of the crime against the State's need to protect public order, the Court noted that Mr. Nasri was both deaf and mute, had lived in France since he was five years old, and six of his siblings were French citizens. The court unanimously held that the deportation of Mr. Nasri would constitute a violation of article 8.

131. The following applications to the European Commission on Human Rights were decided on procedural grounds and further demonstrate the types of complaints alleged by non-citizens under the European Convention for the Protection of Human Rights and Fundamental Freedoms.

132. For example, on 9 September 1998, the European Commission on Human Rights considered the admissibility of an application, *Purtonen v. Finland*.[369] The applicant, an Estonian citizen and resident of Finland, complained that she was discriminated against on the basis of her nationality and invoked article 14 of the Convention.[370] The applicant's former husband was awarded custody of their child and the applicant alleged that her nationality was wrongly taken into account in the custody case. The Commission noted that "in the enjoyment of the rights and freedoms guaranteed by the Convention, article 14 affords protection against different treatment, without an objective and reasonable justification, of persons in similar situations."[371] The Commission noted that although the domestic court took into consideration the cultural backgrounds of the spouses, it was not a basis for the judgement. In determining the application was inadmissible, the Commission stated that the aim pursued by the domestic courts was a legitimate one, namely the protection of the interests of the child.[372]

133. The Court considered the admissibility of an application, *S.N. v. Netherlands*[373] at its session on 4 May 1999. Among other complaints, the applicant, an Iranian national seeking asylum in the Netherlands, alleged that the "failure of Netherlands law to provide an appeal against the decision of the Regional Court upholding the refusal of recognition of refugee status constitutes discrimination against asylum seekers and is contrary to article 14."[374] In declaring the application inadmissible, the Court stated there was no difference in treatment, thus no discrimination as the applicant's situation did not differ from that of other categories of persons, including Netherlands nationals.[375]

VIII. INTER-AMERICAN COURT OF HUMAN RIGHTS (IACHR)

IACHR jurisprudence

134. In 1983 and 1984 the Inter-American Court of Human Rights, at the request of the Government of the Republic of Costa Rica, considered proposed constitutional amendments to articles 14 and 15 of the Costa Rican Constitution that deal with the requirements for naturalization.[376] The proposed article 14, *inter alia*, changed minimum period of residency requirements but retained preferential treatment for Central Americans, Spaniards, and Ibero-Americans. Furthermore, proposed article 14 allowed "foreign women who, by marriage

to a Costa Rican loses her nationality or who after two years of marriage to a Costa Rican and the same period of residence in the country, indicates her desire to take on our nationality" to become naturalized Costa Rican citizens.

135. The Inter-American Court considered the proposed amended article 14 in light of article 1 (1) (Non-Discrimination Clause), article 17 (4) (Rights of the Family), article 20 (Right to Nationality), and article 24 (Right to Equal Protection) of the American Convention on Human Rights.

136. In doing so, the Court concluded that (1) the proposed amendment *did not* affect the right to nationality guaranteed by article 20; (2) that the provisions stipulating preferential treatment in the acquisition of Costa Rican nationality for Central Americans, Ibero-Americans, and Spaniards *did not* constitute discrimination contrary to the Convention; and (3) that the provision stipulating preferential treatment in cases of naturalization applicable to marriage contained in proposed article 14 (4), which favours only one of the spouses, *did* constitute discrimination incompatible with articles 17 (4) and 24 of the Convention.[377]

Notes

[1] CERD Communication 10/1997 (1999).

[2] UN Doc. CERD/C/54/D/10/1997 (1999).

[3] CERD Communication 8/1996 (1996).

[4] UN Doc. CERD/C/54/D/8/1996 (1999).

[5] UN Doc. CERD/C/249.

[6] UN Doc. A/48/18, para. 496 (1993).

[7] *Ibid.* at para. 481.

[8] UN Doc. CERD/C/221/Add.1.

[9] *Ibid.* at para. 209.

[10] *Ibid.* at para. 218.

[11] *Ibid.* at para. 229.

[12] UN Doc. CERD/C/226/Add.5.

[13] *Ibid.* at para. 362.

[14] *Ibid.*

[15] *Ibid.* at para. 380.

[16] UN Doc. CERD/C/207/Add.1.

[17] UN Doc. A/48/14, para. 91.

[18] *Ibid.*

[19] UN Doc. CERD/226/Add.9.

[20] *Ibid.* at para. 314.

[21] *Ibid.* at para. 327.

[22] UN Docs. CERD/C/263/Add.3 and CERD/C/283.

[23] A/50/18, para. 602.

[24] UN Doc. CERD/C/237/Add.1.

[25] UN Doc. A/50/18, para. 83.

[26] *Ibid.* at para. 101.

[27] UN Doc. CERD/C/279/Add.1.

[28] *Ibid.* at para. 550.

[29] *Ibid.*

[30] *Ibid.* at para. 570.

[31] UN Doc. CERD/C/350/Add.1.

[32] UN Doc. A/54/18, para. 484.

[33] *Ibid.* at para. 491.

[34] *Ibid.* at para. 499.

[35] *Ibid.* at para. 496.

[36] *Ibid.* at para. 497.

[37] UN Doc. CERD/C/337/Add.2.

[38] A/54/18, para. 370.

[39] *Ibid.* at para. 376, 381.

[40] *Ibid.* at para. 373.

[41] *Ibid.* at para. 380.

[42] UN Doc. CERD/C/331/Add.1.

[43] UN Doc. A/54/18, para. 509.

[44] *Ibid.* at para. 514.

[45] UN Doc. CERD/C/334/Add.1.

[46] UN Doc. A/54/18, para. 525.

[47] *Ibid.* at para. 529.

[48] *Ibid.*, at para. 530.

[49] *Ibid.* at para. 533.

[50] *Ibid.* at para. 539.

[51] *Ibid.* at para. 538.

[52] UN Doc. CERD/C/336/Add.1.

[53] UN Doc. A/54/18, para. 261.

[54] *Ibid.* at para. 267.

[55] UN Doc. CERD/C/329/Add.2 (1999).

[56] UN Doc. CERD/C/56/Misc.40/Rev.3, at para. 9 (2000).

[57] *Ibid.*

[58] *Ibid.* at para. 11.

[59] *Ibid.*

[60] UN Doc. CERD/C/362/Add.1 (1999).

[61] UN Doc. CERD/C/56/Misc.30/Rev.3, at para. 7 (2000).

[62] UN Doc. CERD/C/329/Add.1 (1999).

[63] UN Doc. CERD/C/56/Misc.31/Rev.3, at para. 12 (2000).

[64] *Ibid.*

[65] *Ibid.*

[66] UN Doc. CERD/C/337/Add.5 (1999).

[67] UN Doc. CERD/C/56/Misc.20/Rev.4, at para. 9 (2000).

[68] Communication No. R.9/35, UN Doc. Supp. No. 40 (A/36/40) at 134 (1981).

[69] Ibid. at para. 6.1.

[70] Ibid. at para. 7.2.

[71] Ibid. at para. 1.2.

[72] Ibid. at para. 9.2.b.2.i.8.

[73] Ibid. at para. 9.2.b.2.i.3.

[74] Communication No. 155/1983, UN Doc. CCPR/C/OP/2 at 11 (1990).

[75] Ibid. at para. 2.4.

[76] Ibid. at para. 8.2.

[77] Ibid. at para. 19.2.

[78] Ibid.

[79] Communication No. 319/1988, UN Doc. CCPR/C/43/D/319/1988 (1988).

[80] Ibid. at para. 3.

[81] Ibid. at para. 5.2.

[82] Communication No. 469/1991, UN Doc. CCPR/C/49/D/469/1991 (1991).

[83] Ibid. at para. 14.2.

[84] Ibid at para. 15.6; but see also para. 9 of the Dissenting Opinion of Francisco José Aguilar Urbina (proposing another interpretation of the obligations under article 6 (2) of the Covenant and stating that since it has abolished the death penalty, Canada has to guarantee the right to life for all persons in its jurisdiction, without any limitation).

[85] Communication No. 456/1991, UN Doc. CCPR/C/51/D/456/1991 (1991).

[86] Ibid. at para 3.1.

[87] Ibid. at paras. 2.1, 4.7.

[88] Ibid. at para. 9.2.

[89] Communication No. 586/1994, UN Doc. CCPR/C/57/D/586/1994 (1994).

[90] Ibid. at para. 3.

[91] Ibid. at para. 12.4.

[92] Ibid. at para. 12.6.

[93] Communication No. 560/1993, UN Doc. CCPR/C/59/D/560/1993 (1993).

[94] Ibid. at para. 3.9.

[95] Ibid.

[96] Ibid. at para. 4.11.

[97] Ibid. at para. 7.14.

[98] Ibid. at para. 9.6.

[99] Communication No. 706/1996, UN Doc. CCPR/C/61/D/706/1996 (1996).

[100] Ibid. at para. 3.1.

[101] Ibid. at para. 5.6.

[102] Ibid. at para. 8.4.

[103] UN Doc. CCPR/C/68/767/1997 (2000).

[104] Ibid. at para. 11.3.

[105] Ibid.

[106] Communication No. 27/1978, UN Doc. CCPR/C/OP/1 at 12 (1984).

[107] Ibid. at para. 13.

[108] Ibid. at para. 14.

[109] Ibid. at para. 16.

[110] Communication No. R. 13/58, UN Doc. Supp. No. 40 (A/36/40) at 160 (1981).

[111] Ibid. at para. 7.4.

[112] Ibid. at para. 10.1.

[113] Communication No. 121/1982 (2 April 1980), UN Doc. CCPR/C/OP/1 at 32 (1984).

[114] Ibid. at para. 3.1.

[115] Ibid. at para. 6.

[116] Communication No. 173/1984, UN Doc. CCPR/C/OP/1 at 51 (1984).

[117] Ibid. at para. 2.2.

[118] Ibid. at para. 4.

[119] Communication No. 209/1986, UN Doc. CCPR/C/OP/1 at 68 (1984).

[120] Ibid. at para. 3.5.

[121] Ibid. at para. 5.2.

[122] Communication No. 236/1987, UN Doc. Supp. No. 40 (A/43/40) at 258 (1988).

[123] Ibid. at para. 5.5.

[124] Ibid. at para. 6.3.

[125] Communication No. 475/1991, UN Doc. CCPR/C/50/D/475/1991 (1991).

[126] Ibid. at para. 3.2.

[127] Ibid. at para. 6.2.

[128] Communication No. 536/1993, UN Doc. CCPR/C/53/D/536/1993 (1993).

[129] Ibid. at para. 3.4.

[130] Ibid. at para. 6.7.

[131] Communication No. 659/1995, UN Doc. CCPR/C/58/D/659/1995 (1995).

[132] Ibid. at para. 3.2.

[133] Ibid. at para. 4.2.

[134] Communication No. 521/1992, UN Doc. CCPR/C/50/D/521/1992 (1992).

[135] Ibid. at para. 11.6.

[136] Communication No. 735/1997, UN Doc. CCPR/C/61/D/735/1997 (1997).

[137] Ibid. at para. 3.1.

[138] Ibid. at para. 9.2.

[139] UN Doc. CCPR/C/79/Add.42 (1994).

[140] Ibid. at para. 6.

[141] Ibid.

[142] UN Doc. CCPR/C/70/Add. 53 (1995).

[143] UN Doc. CCPR/C/79/Add.59 (1995).

[144] UN Doc. CCPR/C/79/Add.59 (1995).

[145] UN Doc. CCPR/C/79/Add.71 (1996).

[146] UN Doc. CCPR/C/79/Add.62 (1996).

[147] UN Doc. CCPR/C/79/Add.87 (1997).

[148] UN Doc. CCPR/C/79/Add.93 (1998).

[149] UN Doc. CCPR/C/79/Add.102 (1998).

[150] Ibid. at para. 13.

[151] Article 27 reads: "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

[152] *Supra* note 150.

[153] UN Doc. CCPR/C/79/Add.100 (1998).

[154] Ibid. at para. 7.

[155] UN Doc. CCPR/C/123/Add.1.

[156] UN Doc. CCPR/C/79/Add.109, para. 13 (1999).

[157] UN Doc. CCPR/C/81/Add.12.

[158] UN Doc. CCPR/C/79/Add.108, para. 7 (1999).

[159] UN Doc. CCPR/C/DNK/99/4 (1999).

[160] UN Doc. CCPR/C/70/DNK at para. 15 (2000).

[161] Ibid.

[162] Ibid. at para. 16.

[163] Ibid.

[164] UN Doc. CCPR/C/128/Add.1.

[165] UN Doc. CCPR/C/70/GAB at para. 16 (2000).

[166] UN Doc. E/C.12/1993/18 (1993).

[167] UN Doc. E/C.12/1994/16 (1994).

[168] UN Doc. E/C.12/1995/15 (1995).

[169] Ibid. at para. 19.

[170] UN Doc. E/1996/6/Add.7 (1996).

[171] UN Doc. E/C.12/1/Add.6, para. 13 (1996).

[172] Ibid. at para. 14.

[173] UN Doc. E/1994/104/Add.7 (1994).

[174] UN Doc. E/C.12/1/Add.8, para. 12 (1996).

[175] Ibid. at para. 21.

[176] Ibid. at para. 15.

[177] Ibid. at para. 22.

[178] UN Doc. E/1994/104/Add.5 (1994).

[179] UN Doc. E/C.12/1/Add.2, para. 10 (1996).

[180] Ibid. at para. 17.

[181] UN Doc. E/1994/106/Add.9 (1994).

[182] UN Doc. E/C.12/1/Add.17, para. 13 (1997).

[183] Ibid. at para. 17.

[184] Ibid. at para. 29.

[185] UN Doc. E/1990/5/Add.26 (1990).

[186] UN Doc. E/C.12/1/Add.15, para. 16 (1997).

[187] Ibid.

[188] Ibid.

[189] Ibid. at para. 17.

[190] Ibid. at para. 22.

[191] Ibid. at para. 24.

[192] UN Doc. E/C.12/1994/19 (1994).

[193] UN Doc. E/C.12/1/Add.19, para. 7 (1997).

[194] Ibid at para. 12.

[195] Ibid.

[196] UN Doc. E/1990/6/Add.11 (1990).

[197] UN Doc. E/C.12/1/Add.25, para. 33 (1998).

[198] Ibid. at para. 13.

[199] Ibid. at para. 23.

[200] UN Doc. E/1990/5/Add.31 (1990).

[201] UN Doc. E/C.12/1/Add.23, para. 11 (1998).

[202] Ibid.

[203] UN Doc. E/1994/104/Add.13 (1994).

[204] UN Doc. E/C.12/1/Add.26, para. 22 (1998).

[205] UN Doc. E/1990/5/Add.32 (1990).

[206] UN Doc. E/C.12/1/Add.24, para. 6 (1998).

[207] Ibid. at para. 19.

[208] Ibid. at para. 8.

[209] Ibid. at para. 22.

[210] UN Doc. E/1994/104/Add.14 (1994).

[211] UN Doc. E/C.12/1/Add.31, para. 37 (1998).

[212] Ibid. at para. 39.

[213] Ibid. at para. 49.

[214] UN Doc. E/1994/104/Add.12 (1994).

[215] UN Doc. E/C.12/1/Add.28, para. 12 (1998).

[216] UN Doc. E/1994/104/Add.14 (1994).

[217] UN Doc. E/C.12/1/Add.29, para. 18 (1998).

[218] Ibid.

[219] Ibid. at para. 14.

[220] Ibid. at para. 28.

[221] UN Doc. E/1990/5/Add.39 (1990).

[222] UN Doc. E/C.12/1/Add.27, para. 21 (1998).

[223] Ibid. at para. 16.

[224] Ibid. at para. 13.

[225] Ibid. at para. 36.

[226] UN Doc. E/1990/5/Add.33 (1990).

[227] UN Doc. E/C.12/1/Add.30, para. 16 (1998).

[228] Ibid. at para. 6.

[229] Ibid. at para. 33.

[230] UN Doc. E/1990/6/Add.16 (1990).

[231] UN Doc. E/C.12/1/Add.38, para. 6 (1999).

[232] UN Doc. E/1990/5/Add.36 (1990).

[233] UN Doc. E/C.12/1/Add.39, para. 5 (1999).

[234] UN Doc. E/1994/104/Add.16 (1994).

[235] UN Doc. E/C.12/1/Add.37, para. 11 (1999).

[236] Ibid.

[237] Ibid. at para. 12.

[238] Ibid. at para. 29.

[239] UN Doc. E/1994/104/Add.15 (1994).

[240] UN Doc. E/C.12/1/Add.34, para. 10 (1999).

[241] Ibid.

[242] Ibid. at para. 23.

[243] Ibid. at para. 24.

[244] Ibid at, para. 26.

[245] UN Doc. E/1990/6/Add.15 (1990).

[246] UN Doc. E/C.12/1/Add.32, para. 6 (1999).

[247] Ibid. at para. 7.

[248] Ibid.

[249] UN Doc. E/1990/6/Add.15 (1990).

[250] UN Doc. E/C.12/1/Add.35, para. 5 (1999).

[251] Ibid. at para. 10.

[252] Ibid. at para. 11.

[253] Ibid. at para. 27.

[254] UN Doc. E/1994/104/Add.20 (1994).

[255] UN Doc. E/C.12/1/Add.53 at para. 11 (2000).

[256] Ibid.

[257] Ibid. at para. 19.

[258] UN Doc. E/C.12/4/Add.1.

[259] UN Doc. E/C.12/1/Add.52 at para. 28 (2000).

[260] UN Doc. E/1990/6/Add.17 (1990).

[261] UN Doc. E/C.12/1/Add.46 at para. 15 (2000).

[262] Ibid. at para. 29.

[263] Ibid. at para. 30.

[264] UN Doc. CEDAW/C/JPN/12 (1994).

[265] UN Doc. A/50/38 at para. 633 (1995).

[266] Ibid.

[267] UN Doc. CEDAW/C/MOR/1 (1996).

[268] UN Doc. A/52/38/Rev.1 at para. 64 (1997).

[269] UN Docs. CEDAW/C/LUX/1 and 2 (1996).

[270] UN Doc. A/52/38/Rev.1 at para. 211 (1997).

[271] UN Docs. CEDAW/C/DZA/1 and Corr.1 and Add.1 (1998).

[272] UN Doc. A/54/38, para. 83 (1999).

[273] Ibid.

[274] Ibid. at para. 84.

[275] UN Docs. CEDAW/C/ESP/3 and CEDAW/C/ESP/4 (1998).

[276] UN Doc. CEDAW/C/1999/L.2/Add.6, para. 40 (1999).

[277] Ibid.

[278] Ibid. at para. 41.

[279] UN Doc. CEDAW/C/IRQ/2-3.

[280] UN Doc. CEDAW/C/2000/II/Add.4 at para. 22 (2000).

[281] UN Docs. CEDAW/C/JOR/1 and CEDAW/C/JOR/2.

[282] UN Doc. A/55/38 at para. 172 (2000).

[283] UN Doc. CEDAW/C/DEU/2-3 and 4.

[284] UN Doc. A/55/38 at para. 317 (2000).

[285] Ibid.

[286] Ibid. at para. 318.

[287] Ibid.

[288] UN Doc. CRC/C/15/Add.18 at para. 12 (1994).

[289] UN Doc. CRC/C/15/Add.2 at para. 9 (1993).

[290] Ibid. at para. 12.

[291] UN Doc. CRC/C/15/Add.21 (1994).

[292] Ibid. at para. 11.

[293] Ibid.

[294] UN Doc. CRC/C/15/Add.33 at para. 30 (1995).

[295] Ibid.

[296] UN Doc. CRC/C/15/Add.34 at para. 12 (1995).

[297] UN Doc. CRC/C/15/Add.41 (1995).

[298] Ibid. at para. 11.

[299] Ibid.

[300] Ibid. at para. 17.

[301] Ibid.

[302] Ibid.

[303] UN Doc. CRC/C/8/Add.2.

[304] UN Doc. CRC/C/15/Add.54 (1996).

[305] UN Doc. CRC/C/28/Add.6 (1998).

[306] UN Doc. CRC/C/15/Add.84 at para. 11 (1998).

[307] UN Doc. CRC/C/8/Add.35 (1998).

[308] UN Doc. CRC/C/15/Add.96 at para. 17 (1998).

[309] Ibid.

[310] Ibid.

[311] UN Doc. CRC/C/11/Add.14 (1999).

[312] UN Doc. CRC/C/15/Add.98, para. 9 (1999).

[313] Ibid. at para. 27.

[314] Ibid.

[315] Ibid. at para. 30.

[316] Ibid.

[317] UN Doc. CRC/C/3/Add.46 (1999).

[318] UN Doc. CRC/C/15/Add.99, para. 16 (1999).

[319] Ibid.

[320] Ibid. at para. 16.

[321] Ibid. at para. 27.

[322] Ibid. at para. 18.

[323] UN Doc. CRC/C/3/Add.48 (1999).

[324] UN Doc. CRC/C/15/Add.100, para. 17 (1999).

[325] Ibid. at para. 30.

[326] Ibid.

[327] Ibid. at para. 35.

[328] Ibid.

[329] UN Doc. CRC/C/65/Add.3 (1999).

[330] UN Doc. CRC/C/15/Add.101, para. 10 (1999).

[331] Ibid.

[332] Ibid. at para. 11.

[333] Ibid.

[334] Ibid. at para. 12.

[335] Ibid. at para. 13.

[336] Ibid.

[337] UN Doc. CRC/C/70/Add.1 (1999).

[338] UN Doc. CRC/C/15/Add.102, para. 18 (1999).

[339] Ibid. at para. 30.

[340] Ibid.

[341] UN Doc. CRC/C/11/Add.18.

[342] UN Doc. CRC/C/15/Add.138 at para. 38 (2000).

[343] Ibid.

[344] Ibid. at para. 39.

[345] UN Docs. CRC/C/41/Add.7 and 9.

[346] UN Doc. CRC/C/15/Add.135 at para. 43 (2000).

[347] UN Doc. CRC/C/11/Add.16.

[348] UN Doc. CRC/C/15/Add.128 at para. 30 (2000).

[349] UN Doc. CRC/C/70/Add.2.

[350] UN Doc. CRC/C/15/Add.126 at para. 30 (2000).

[351] UN Doc. CRC/C/70/Add.4.

[352] UN Doc. CRC/C/15/Add.125 at para. 29 (b) (2000).

[353] *Berrehab v. the Netherlands*, Series A, No. 138 (Eu. Ct. Hum. Rts. 26 June 1988).

[354] *Beldjoudi v. France*, Series A, No. 234-A (Eu. Ct. Hum. Rts. 26 March 1992).

[355] Case No. 35/1995/541/627.

[356] Ibid. at para. 32.

[357] Ibid. at para. 36.

[358] Ibid. at para. 31.

[359] Ibid. at para. 37.

[360] Ibid. at para. 38.

[361] *Bouchelkia v. France*, Reports 1997-I (Eu. Ct. Hum. Rts. 29 January 1997).

[362] Ibid.

[363] *Moustaquim v. Belgium*, Series A, No. 193 (Eu. Ct. Hum. Rts. 18 February 1991).

[364] Ibid. at para. 48.

[365] Ibid. at para. 49.

[366] Ibid. at para. 41.

[367] Ibid. at para. 43.

[368] *Nasri v. France*, Series A, No. 324 (Eu. Ct. Hum. Rts. May 1996).

[369] Application No. 32700/96 (1996).

[370] Ibid. Complaints sec., para. 2.

[371] Ibid. Law sec., para. 2.

[372] Ibid.

[373] Application No. 38088/97 (1997).

[374] Ibid. at para. 3.

[375] Ibid.

[376] The amendment proposed by the Special Committee of the Legislative Assembly in its Report of 22 June 1983 read:

> Article 14. The following are Costa Ricans by naturalization:
>
> (1) Those who have acquired this status by virtue of previous laws;

(2) Native-born nationals of the other countries of Central America, Spaniards and Ibero-Americans with five years official residence in the country and who fulfill the other requirements of the law;

(3) Central Americans, Spaniards and Ibero-Americans, who are not native-born, and other foreigners who have held official residence for a minimum period of seven years and who fulfil the other requirements of the law;

(4) A foreign woman who, by marriage to a Costa Rican loses her nationality or who after two years of marriage to a Costa Rican and the same period of residence in the country, indicates her desire to take on our nationality; and

(5) Anyone who receives honorary nationality from the Legislative Assembly.

[377] Article 17 (4) of the American Convention on Human Rights reads:

Article 17. Rights of the Family

Paragraph 4. The States parties shall take appropriate steps to ensure the equality of rights and the adequate balancing of responsibilities of the spouses as to marriage, during marriage, and in the event of its dissolution. In case of dissolution, provision shall be made for the necessary protection of any children solely on the basis of their own best interests.

While article 24 reads:

Article 24. Right to Equal Protection

All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.